

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 275 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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BHOJRAJ DANUMAL THAKKER & ANR.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

Shri Jitendra M. Patel, Advocate, for the  
Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 02/05/96

ORAL JUDGEMENT

The order passed by the Collector of Banaskantha at Palanpur (respondent No. 2 herein) on 8th December 1983 as affirmed in revision by the order passed by the

State Government (respondent No. 1 herein) on 23rd April 1984 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No. 2 directed the petitioners to pay the additional premium amount in the sum of Rs. 30676.44 ps. for conversion of one parcel of land bearing survey No. 199+200+201(part) admeasuring 7 acres 24 gunthas (equivalent to 30712 square meters) situated at Dhanera District Banaskantha (the disputed land for convenience). from new tenure to old tenure.

2. The facts giving rise to this petition move in a narrow compass. The disputed land was a new tenure land in the hands of the petitioners. They applied on 5th January 1982 to respondent No. 2 for conversion of the disputed land from new tenure to old tenure. Its copy is at Annexure B to this petition. By the order passed on 11th July 1986, respondent No. 2 directed the petitioners to pay the premium amount in the sum of Rs. 38345.55 ps. within one month from the date of the order towards the premium for the purpose. Its copy is at Annexure C to this petition. It appears that the petitioners paid the premium amount on 21st July 1983. It however appears that the premium was fixed in accordance with the Government Resolution of 20th May 1980. Its copy is at Annexure A to this petition. It appears that in the meantime the State Government issued another resolution on 13th July 1983 revising upward the premium amount for the purpose from 50% to 90% of the market value. Its copy is at Annexure E to this petition. Thereupon respondent No. 2 issued one communication to the petitioners on 12th August 1983 calling upon them to pay the difference premium amount in the sum of Rs. 30676.44 ps. being the difference between 50% premium amount and the 90% premium amount. Its copy is at Annexure D to this petition. The petitioners paid the additional premium amount within the stipulated time-limit but objected to levy thereof by the communication of 29th August 1983. Its copy is at Annexure F to this petition. Thereafter by the order passed by respondent No. 2 On 1st December 1982, respondent No. 2 granted to the petitioners permission to use the disputed land for non-agricultural purposes on payment of the premium amount as fixed earlier and on certain terms and conditions. Its copy is at Annexure G to this petition. The aggrieved petitioners carried the matter in revision before respondent No. 1 under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief). By the order passed by and on behalf of respondent No. 1 on 23rd April 1984 but communicated on 20th May 1984, respondent No. 1 rejected the aforesaid

revisional application. Its copy is at Annexure H to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under article 227 of the Constitution of India for questioning the correctness of the order at Annexure G to this petition as affirmed in revision by the order at Annexure H to this petition and for refund of the additional amount directed to be paid by respondent No. 2 by the order at Annexure D to this petition.

3. Learned Assistant Government Pleader Shri Sompura for the respondents has raised a preliminary objection against maintainability of this petition under art. 227 of the Constitution of India. Thereupon learned Advocate Shri Patel for the petitioners orally applies for leave to convert this petition as also under art. 226 of the Constitution of India. Such oral request is accepted and this petition is ordered to be treated as also under art. 226 of the Constitution on payment of the deficit court-fees, if any, within four weeks from today.

4. It may be noted that the order at Annexure G to this petition is for grant of what is popularly known as the N.A. permission qua the disputed land. That could not have aggrieved the present petitioners. That could not have been challenged in revision. What was required to be challenged in revision was the order at Annexure D to this petition passed on 12th August 1983 directing the petitioners to pay the additional amount of premium being the difference between the 50% premium and the 90% premium according to the revised circular at Annexure E to this petition. However, since respondent No. 1 considered the case of the additional premium while deciding the revisional proceeding, it would be desirable not to dwell upon technicalities in this case.

5. The grievance of the petitioners is that the premium amount should have been fixed on the basis of the government guidelines prevalent on the date of the application and not on the date of the order granting such conversion of the disputed land from new tenure to old tenure. The ruling of this Court in the case of Narayanbhai Ramabhai v. State of Gujarat reported in 1985(1) 26(1) G.L.R. 531 relied on by learned Assistant Government Pleader Shri Sompura for the respondents provides a complete answer to the aforesaid submission urged before me by learned Advocate Shri Patel for the petitioners. In that case an application for exemption under sec. 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 was made on 25th September 1980 and it remained undisposed of for a long time. In the

meantime, new guidelines came into force and the application for exemption was decided on the basis of the new guidelines. In that context, this Court has held that the petitioner in that case could not contend that his application should have been decided under the old guidelines.

6. The aforesaid ruling of this Court is on all fours applicable in the present case. The application for conversion of the disputed land from new tenure to old tenure was made on 5th January 1983. It remained pending for orders. The necessary order came to be passed on 12th August 1983 or rather on 1st December 1983. By that time the new guidelines in the form of Government Resolution at Annexure E to this petition had come into force from 13th July 1983. In view of the aforesaid ruling of this Court, the case for fixation of the premium was rightly decided on the basis of the new guidelines contained in the Government Resolution at Annexure E to this petition.

7. The aforesaid ruling of this Court cannot and need not be distinguished on the ground that it was in the context of an application for exemption under sec. 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976. By analogy, the principle enunciated therein would be applicable in the present case. Sitting as a single Judge, I am bound by it. Even otherwise, I am in respectful agreement therewith.

8. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures G and H to this petition calls for no interference by this Court in this petition under articles 226 and 227 of the Constitution of India.

9. In the result, this petition fails. Rule is discharged with no order as to costs.

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